MEETING
DATE: July 22, 2014

TO: City Council

FROM: Michael Frank, City Manager
Scott Ward, Director of Hamilton Base Reuse

SUBJECT: HAMILTON SENIOR TRIANGLE AGREEMENT OF PURCHASE AND SALE

REQUEST

Consider adopting a resolution approving Agreement of Purchase and Sale with Urban Community Partners LLC for the sale of the Hamilton Senior Triangle, APN 157-860-03.

RECOMMENDATION

Adopt resolution.

BACKGROUND

Per direction from City Council provided on April 29, 2014, Staff has negotiated a Purchase and Sale Agreement (“Agreement”) with Urban Community Partners, LLC (“UCP”) for approximately 1.5 acres of land (“Property”) for $450,000 or more, depending on the number of housing units eventually entitled (see attached Purchase and Sale Agreement).

CONSIDERATIONS

1) Proposer: UCP is an established real estate development firm with a history of successful projects. Council approved an Exclusive Right to Negotiate (“ERN”) with UCP for the Property in April of 2014.

2) Proposal: UCP proposes to purchase the Property for development into for-sale market rate seniors restricted (55 and older) medium-density “Pocket Neighborhood” residential for a proposed purchase price of $450,000 plus additional amounts if the Property is entitled for more than 14 units.

3) Deposit: A deposit of $25,000 will be paid by the Buyer and will become non-refundable 90 days after execution of the Agreement.
4) Closing: Close of Escrow must occur by the earlier of i) thirty days after final, non-appealable, resolution of any administrative action or lawsuit over the issuance of any City Approvals or Government Approvals, or ii) two years after execution of the Agreement.

5) Zoning: UCP’s proposal will meet inclusionary requirements for senior housing in Novato but will also require an amendment to the Hamilton Reuse Plan to allow for for-sale market rate units on the Property.

The Hamilton Reuse Plan calls for twenty-five (25) senior low and very-low income rental units on the Property. However, senior housing developers approached by Staff have consistently indicated that such a development is not economically feasible since it would lack necessary economies of scale and would not be competitive for necessary subsidies. An appraisal report commissioned by the City in February of this year came to the same conclusion and assigned a negative or nominal value to the site as currently zoned.

The Housing Element of the Novato General Plan (“HE”) also anticipates twenty-five (25) senior low-income and very low-income rental units on the Property. However, Staff estimates that, allowing for units built, under construction, approved or in process, the City has sites available to accommodate the Regional Housing Needs Allocation (“RHNA”). As such, reducing the number of low-income units provided on this site will have a negligible impact on the City’s ability to meet its RHNA.

6) Parking Easement: The Agreement provides for an access and parking easement on the adjacent City-owned “B-Street” parcel (APN157-860-04), the precise extents of which are to be determined, for a maximum of 16 guest parking spaces, all of which will be usable by the general public.

ATTACHMENTS

1. Resolution
2. Purchase and Sale Agreement
CITY COUNCIL OF THE CITY OF NOVATO

RESOLUTION NO. ______

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT OF PURCHASE AND SALE WITH URBAN COMMUNITY PARTNERS LLC FOR THE HAMILTON SENIOR TRIANGLE, APN 157-860-03

WHEREAS, the City Council of the City of Novato, on April 29, 2014, authorized the City Manager to negotiate an Agreement of Purchase and Sale (“Agreement”) with Urban Community Partners, LLC (“Buyer”) for the parcel known as the “Hamilton Senior Triangle”, APN 157-860-03 and a parking and access easement on an adjacent parcel, APN 157-860-04 (“Property”).

WHEREAS, the City of Novato has negotiated an Agreement with the Buyer which would sell the Property to the Buyer for an amount not less than $450,000 and generally reflecting the terms described to and approved by the City Council.

NOW, Therefore, be it resolved that the City Council of the City of Novato hereby authorizes the City Manager or his designee to execute the aforementioned Agreement of Purchase and Sale and all other documents necessary to the closing of the transaction and to make minor modifications to the agreement with the approval of the City Attorney.

* * * * * *

I HEREBY CERTIFY that the foregoing resolution was duly and regularly adopted by the City Council of the City of Novato, Marin County, California, at a meeting thereof, held on the ____ day of ___________________, by the following vote, to wit:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

Sheri Hartz, City Clerk

Approved as to form:

__________________________

City Attorney of the City of Novato
AGREEMENT OF PURCHASE AND SALE

This Agreement for Purchase and Sale ("Agreement") is dated as of ____________, 2014, for identification purposes only, and is entered into by and between Urban Community Partners, LLC, a California Liability Company ("Buyer") and the City of Novato, a California general law city ("Seller"), who hereby agree as follows:

ARTICLE 1. GENERAL

1.01 The Purchase Property. Seller is the owner of the unimproved real property commonly known as the "Hamilton Senior Triangle" located on Hamilton Parkway in Novato, California, bearing APN 157-860-03 and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference. Seller also owns the unimproved real property commonly known as the "B"-Street Parcel, bearing APN 157-860-04 (the "Adjacent Property") which is located immediately adjacent to the north and west of the Hamilton Senior Triangle. Buyer desires that as part of its purchase of the Hamilton Senior Triangle, the Seller convey to the Buyer an access and parking easement ("Parking Easement") on the Adjacent Property that will accommodate up to 16 parking spaces thereon. The Hamilton Senior Triangle and the Parking Easement shall collectively be referred to herein as the "Property". Seller desires to sell and Buyer desires to buy the Property, on the terms and conditions set forth herein.

1.02 Seller’s Acquisition of Title. The Seller acquired its interest in the Property from the United States of America, acting by and through the Secretary of the Army, by Quitclaim Deed ("Army Quitclaim Deed") recorded in the official office of records, Marin County, on October 10, 1997, as document no. 97-057878.

1.03 Intent of the Parties. The Buyer intends to purchase the Property for the purpose of constructing thereon residential units and except as to those units that must be made affordable to income eligible families pursuant to Seller’s inclusionary zoning ordinance, Buyer intends to sell said units, at market rate prices, to persons of fifty-five years or older (the "Project" or "Development").

1.04 Effective Date. For purposes of this Agreement, the term "Effective Date" shall be the latter date that both Buyer and Seller have fully executed and initialed all appropriate provisions of this Agreement.

ARTICLE 2. PURCHASE AND SALE

2.01 Purchase and Sale. Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller on the terms and conditions specified in this Agreement.

2.02 Price. The purchase price for the Property (the "Purchase Price") shall be four hundred thousand fifty dollars ($450,000.00). This Purchase Price shall be increased by the amount set forth in section 4.03(e) of this Agreement.
2.03 Deposit. Within three (3) business days following the Effective Date of this Agreement, Buyer shall deposit with Escrow Holder (defined below), the sum of Twenty Five Thousand Dollars ($25,000.00), which sum shall be placed in an interest-bearing account, and such sum and the interest accrued on such amount prior to the release of such amount to Seller, or the return of such amount to Buyer, shall be referred to as the “Deposit.” Notwithstanding anything stated to the contrary in this Agreement, ninety (90) days after the Effective Date, said Deposit shall become non-refundable and shall be paid over to the Seller as consideration for entering into this Agreement and extending the ERN (as described in section 4.01, below), unless prior to said ninetieth day, Buyer delivers written notice to the Seller disapproving an item of Due Diligence in accordance with the applicable provisions of this Agreement which said delivery entitles Buyer to terminate this Agreement and receive a refund of said Deposit.

2.04 Instructions Regarding Deposit. If Escrow Holder requires further written instructions as a condition to releasing the Deposit to either Seller or Buyer as required or permitted under this Agreement, Seller and Buyer shall promptly execute (and deliver to Escrow Holder) such additional instructions as are reasonably required by Escrow Holder.

2.05 Payment. The balance of the Purchase Price after applying the Deposit amount described in section 2.03 above, plus or minus Prorations and Adjustments, shall be paid into escrow by federally wired “immediately available” funds on or before the Closing Date.

2.06 Payments of the Purchase Price from Escrow. The balance of the Purchase Price after applying Prorations and Adjustments shall remain in the interest bearing escrow account until the Escrow Holder receives a demand signed by both parties to make payment(s) to either party therefrom, in accordance with the provisions of this Agreement. Interest on the amount deposited by Buyer shall be prorated based on the final Purchase Price, after all adjustments provided for in this Agreement have been accounted and applied.

ARTICLE 3. ESCROW, TRANSFER OF TITLE/ASSIGNMENTS AND TITLE INSURANCE

3.01 Opening. The purchase and sale of the Property shall be consummated by means of an escrow opened by Seller at First American Title Company, ______________________________, Attn: __________________________ (telephone number: _______________________) (referred to herein as the “Escrow Holder” and as the “Title Company”). When appropriate, Buyer and Seller shall execute escrow instructions prepared and reasonably requested by Escrow Holder, which escrow instructions shall conform to the terms of this Agreement. If there is any conflict between the terms of this Agreement and the escrow instructions, the terms of this Agreement shall prevail.

3.02 Close of Escrow. Escrow shall close (the “Closing Date” or “Close of Escrow”) (30) days from the last expiration date of any appeal or statute of limitations period(s) without an appeal, legal challenge or law suit having been brought within the applicable appeal period or statute of limitations, including appeals from administrative hearings and law suits, for City Approvals and Government Approvals applicable to the Project. City Approvals shall mean Planning Commission and City Council discretionary approvals including but not limited to the
decisions relative to design review, general plan amendment, rezoning, Hamilton Master Plan amendment, tentative map approval, precise development plan approval, compliance with the California Environmental Quality Act, use permit(s), license(s), variance(s), and encroachment permit(s) and/or easements on City-owned property, as necessary or required by law. All discretionary permits, certificates, and approvals required by any other agency with jurisdiction, including, but not limited to, those relating to Hazardous Materials, if any, wildlife, wetlands, and air quality shall be collectively referred to as "Government Approvals. The outside Closing Date shall be the date that is the earlier of i) two years after the Effective Date; or ii) thirty days after the last City Approval or Government Approval becomes final and non-appealable or for which the applicable statute of limitations has expired without lawsuit or legal challenge having been brought within that statute of limitations.

3.03 Costs and Prorations.

(a) Buyer and Seller shall pay in equal amounts: (i) the escrow fee; (ii) all recording fees; (iii) all costs of drawing the Quitclaim Deed; (iv) all notary fees; (v) any state, County or City documentary transfer and similar taxes imposed on the deed, and (vi) all other costs incurred by the Escrow Agent in order to close escrow under this Agreement.

(b) Buyer shall pay the premium for the CLTA Owner’s Title Policy. Buyer will also pay for the additional cost of obtaining an ALTA Extended Coverage policy if desired by Buyer and the cost of any survey necessary therefor, and any endorsements requested by Buyer.

(c) Each party shall pay its own attorneys’ fees. The parties shall share equally any other miscellaneous costs payable upon Close of Escrow that are not specifically allocated above.

(d) Real property taxes, special taxes, bonds and assessments allocable to the Property (including assessments imposed by any community facilities districts, community service districts, and other district financing, if any) (collectively “Taxes and Assessments”) shall be prorated between Buyer and Seller as of the Closing Date based on the latest available information. Seller shall pay all Taxes and Assessments to the extent (and only to the extent) applicable to the Property for the period prior to the Closing Date. Buyer shall be responsible for all Taxes and Assessments resulting from any supplemental assessments or reassessments resulting from the purchase of the Property by Buyer or any improvement to the Property before or after the Closing Date. All prorations shall be based on a thirty (30) day month and a three hundred sixty (360) day year.

3.04 Expense Prorations. Except as provided by this Agreement, Buyer shall be responsible for all expenses of the Property, including, but not necessarily limited to, expenses relating to and incurred during the Due Diligence-Feasibility Period as set forth in the Agreement.

3.05 Escrow Cancellation; Cancellation Charges. Upon any termination of this Agreement and the Escrow, each party shall execute and deliver to Escrow Holder Escrow
cancellation instructions within five (5) business days of such party’s receipt of such Escrow cancellation instructions from Escrow Holder. If either party terminates this Agreement and the escrow by reason of the other party’s breach, default or misrepresentation, then (without limiting the rights and remedies of the other party) such breaching, defaulting or misrepresenting party shall pay all Escrow cancellation charges. If this Agreement and the Escrow is terminated for any other reason, then the party terminating the Agreement shall pay all Escrow and Escrow cancellation charges. The provisions of this paragraph shall survive any termination of this Agreement.

3.06 Transfer of Title and Assignments. At the Close of Escrow and upon payment of the Purchase Price to Seller, Seller shall convey to Buyer all of Seller’s right, title and interest in and to the Property by Quitclaim Deed in the same form as commonly used by Escrow Holder (the “Quitclaim Deed” or “Deed”). Buyer and Seller shall approve or disapprove all of the aforementioned documents within five (5) calendar days from submittal of same to Seller and/or Buyer, respectively. Any failure by Buyer or Seller to object to any of the documents within five (5) calendar days shall be treated as an approval of the documents.

(a) Title Policy. The Close of Escrow shall be conditioned upon Escrow Holder being prepared and committed as of the Close of Escrow to issue to Buyer its CLTA Owner’s Policy of Title Insurance (the “Title Policy”) with liability limits in the amount of the Purchase Price insuring title to the Property as vested in Buyer, free and clear of all liens and encumbrances and other matters of record affecting title to the Property, except the following: (i) the printed exceptions common to such title policies; (ii) a lien, if any, to secure payment of non-delinquent real property taxes, special taxes, bonds and assessments; (iii) a lien, if any, of supplemental taxes assessed pursuant Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code; (iv) all matters which by this Agreement survive the Close of Escrow; (v) all instruments recorded by Escrow Holder in accordance with the terms of this Agreement; and (vi) all of the other exceptions to title, as reviewed and approved by Buyer, in its reasonable discretion, pursuant to this Agreement (collectively, the “Permitted Exceptions”). The premium for such CLTA Owner's Policy of Title Insurance, and the cost of any endorsements requested by Buyer shall be paid by Buyer.

(b) Option for Extended Coverage Title Policy. Buyer may, at its option, obtain an ALTA Extended Coverage Title Policy from the Title Company instead of a CLTA Standard Coverage Title Policy so long as: (i) such election does not expand the scope of any conditions to Buyer’s obligations or delay or affect in any manner the title review period under section 4.02, the Permitting Period, the Close of Escrow or any of Buyer’s rights or obligations under this Agreement; (ii) Buyer obtains any survey required by the Title Company to issue the ALTA Extended Coverage Title Policy; and (iii) Buyer pays the difference between the premium for such ALTA Extended Coverage Title Policy and the premium for the CLTA Owner’s Policy of Title Insurance and any and all additional costs of obtaining the ALTA Extended Coverage Title Policy, including the cost of any survey required by the Title Company to issue such ALTA Extended Coverage Title Policy. Seller shall execute such documents as are reasonably required by Escrow Holder, including without limitation, an Owner’s Affidavit, to issue the ALTA Extended Coverage Title Policy.
3.07 **Cash and Deed/Assignments.** Pursuant to section 2.05, Buyer shall deposit with Escrow Holder the balance of the Purchase Price and shall instruct Escrow Holder to deliver the Purchase Price to Seller at Close of Escrow.

Seller shall execute and deliver into escrow:

(i) the Quitclaim Deed for the Property conveying title subject to the Permitted Exceptions;

(ii) an affidavit or qualifying statement which satisfies the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the “Non-Foreign Affidavit”);

(iii) a “Withholding Exemption Certificate, Form 590,” pursuant to California Revenue and Taxation Code Sections 18805 and 26131 or its equivalent stating either the amount of withholding required from Seller’s proceeds or that Seller is exempt from such withholding requirement (the “Withholding Exemption Certificate”);

(iv) such other documents as may be reasonably required by the Title Company in order to issue the Title Policy, and Seller shall instruct Escrow Holder to record the Quitclaim Deed at Close of Escrow and deliver to Buyer the Non-Foreign Affidavit and the Withholding Exemption Certificate at the Close of Escrow; and

(vi) a memorandum of this Agreement, to be executed and acknowledged by all parties in a form and content meeting the approval of all parties, and to be recorded in the Marin County Recorder’s Office simultaneously with the Quitclaim Deed.

3.08 **Seller’s Conditions to Close.** Seller’s obligations to close escrow shall be conditioned upon the satisfaction of or written waiver by Seller of: (i) the timely performance of Buyer of each of Buyer’s obligations under this Agreement; (ii) the continuing accuracy of each of Buyer’s representations and warranties under this Agreement; (iii) Buyer’s timely written approval or waiver of the matters set forth in sections 4.02 and 4.03 below; (iv) the full execution and delivery to escrow of the documents set forth in section 3.07 above; and (v) the application by Buyer for and Buyer’s obtaining City Approvals and Government Approvals necessary for Buyer’s Development and occupancy of the Property for the uses generally described in section 1.03 hereof.

Consistent with applicable laws, Seller will make all reasonable efforts and cooperate with Buyer in facilitating the processing of Buyer’s applications for the City Approvals and Government Approvals. Seller shall execute any documents reasonably necessary for Buyer to submit the applications for the City’s Approvals and Governmental Approvals, provided that Buyer shall indemnify the Seller for any and all liability arising out of Buyer’s processing and pursuit of said approvals. Notwithstanding the above, Buyer shall pay all fees, post all security and otherwise pay all costs customarily and normally charged by Seller and/or associated with the application for and processing of said applications for the City Approvals and Government Approvals. Notwithstanding the above, Buyer understands and
agrees that Seller is not committing to the approval of any or all of the necessary City Approvals or Government Approvals and that Buyer will apply for all said necessary City Approvals and Government Approvals consistent with all applicable Federal, State and Local governmental laws, rules and regulations and that the Seller shall be entitled to as much time as state and local law permit to process said City Approvals. Moreover, Buyer acknowledges and agrees that in reviewing and acting upon all of Buyer’s applications for the City Approvals, the Seller retains all of its discretionary land use authority and police powers and no limitations shall be imposed on the exercise of said discretion by this Agreement. However, if the City Approvals or Government Approvals are delayed for any reason beyond the control of the Buyer, then Buyer’s deadlines will be extended in accordance with section 4.04 below.

3.09 **Buyer’s Conditions to Close.** Buyer’s obligations to close escrow shall be conditioned upon the satisfaction of or written waiver by Buyer of: (i) the timely performance by Seller of each of Seller’s obligations under this Agreement; (ii) the continuing accuracy of each of Seller’s representations and warranties under this Agreement; (iii) the issuance of the Title Policies set forth in Section 3.06(a) and (b); (iv) Buyer’s timely, written approval or waiver of approval of all matters set forth in sections 4.02 and 4.03; and (v) the execution and delivery to Escrow of the following documents:

(i) a memorandum of this Agreement, to be executed and acknowledged by all parties in a form and content meeting the approval of all parties, and to be recorded in the Marin County Recorder’s Office simultaneously with the Quitclaim Deed;

(ii) an Assumption Agreement (defined below), to be executed and acknowledged by all parties in a form and content meeting the approval of all parties, and to be recorded in the Marin County Recorder’s Office simultaneously with the Quitclaim Deed;

(iii) a certified copy of a Resolution of the Board of Directors of Buyer or other evidence that Buyer, if an entity, has authorized the persons signing this Agreement to execute this Agreement and that the Agreement is a lawful agreement binding upon the Buyer in accordance with its terms, reasonably satisfactory to the Title Company; and

(iv) any other documents, instruments or funds reasonably required to be delivered by Buyer under the terms of this Agreement or are otherwise required by the Escrow Holder or Title Company in order to close Escrow which have not previously been delivered.

3.10 **Termination.** If on the Closing Date, any condition precedent to the obligations of either party under this Agreement remains unsatisfied and has not been waived by the party entitled hereunder to waive such condition, then this Agreement and the escrow shall automatically terminate without need for any further action by either party, and except as provided below to the contrary in the following sentence, the Deposit shall be returned to Buyer. If the failure of the condition to be satisfied results from an actual breach of any party as to its obligations hereunder, the other party, notwithstanding the termination of this Agreement, may, subject to sections 9.01 and 9.02 below, pursue any and all remedies it may have against the other party at law or in equity.
ARTICLE 4. PERMITTING PERIOD; BUYER’S TITLE REVIEW; BUYER’S DUE DILIGENCE

4.01 General. Buyer and Seller have previously entered into an Exclusive Right to Negotiate Agreement effective dated August 12, 2013 and extended by agreements dated February 4, 2014 and May 8, 2014 ("ERNA"). During the period starting with the Effective Date and ending on the sooner of the Closing Date or the date that this Agreement is terminated, Seller shall not entertain any offers to purchase the Property from any third party. Pursuant to the ERNA, Buyer has had the previous opportunity to perform some inspections and investigation work relating to the Property. The parties recognize therefore that some of the documents, title and other due diligence activity to be performed during the Permitting Period may have already been completed or has begun and is close to completion. The parties do not intend to duplicate or delay this already completed work, but rather intend that during the Permitting Period the due diligence work which has begun will be concluded and other additional feasibility and permitting work will be undertaken and completed.

(a) Written Notice Required to Terminate: Effect of Termination. Except as provided in the penultimate sentence of section 4.02(b), whenever in this Agreement Buyer’s approval or disapproval of a condition or other matter is required on or before a certain date, Buyer shall deliver written notice to Seller on or before 5:00 p.m. Pacific Standard Time on such date, stating either that: (i) Buyer approves such condition or matter, (ii) Buyer disapproves of such condition or matter, or (iii) Buyer waives such condition or matter as a condition to closing. Failure of Buyer to deliver said written notice(s) shall be deemed to be Buyer’s disapproval of such condition or matter. Except as may be expressly stated to the contrary elsewhere in this Agreement (such as in section 2.03), whenever in this Agreement Buyer is deemed to have disapproved a condition or matter, or whenever in this Agreement Buyer is allowed to terminate this Agreement, upon Buyer’s termination in compliance with the provisions, conditions and requirements applicable to such termination right, this Agreement shall terminate and become null and void, the Deposit shall be returned to Buyer pursuant to section 4.05 below, and neither Buyer nor Seller shall have any further or other rights, obligations or liability to the other under this Agreement except for any other obligation or liability of Buyer or Seller as contained in this Agreement which shall specifically survive any termination of this Agreement.

4.02 Title Review.

(a) Pursuant to the terms and conditions of this section 4.02, Buyer shall have the right to approve or disapprove, in Buyer’s sole discretion, any and all matters of and exceptions to title of the Property, including the legal description, as disclosed by the Preliminary Report and all title exception matters referenced therein and in any update(s) thereto (collectively, the “Title Documents”).

(b) Within ten (10) calendar days after the Effective Date, Seller shall cause Escrow Holder to issue and deliver to Buyer the Title Documents. Buyer shall, in writing, notify Seller on or before thirty (30) days following the receipt of the Title Documents ("Title Approval..."
Period”) of Buyer’s approval of the exceptions to the condition of title to the Property. As to any Title Documents that Buyer disapproves, Buyer shall give written notice thereof (“Title Objection Notice”) to Seller prior to the end of the Title Approval Period. Upon receipt by Seller of a Title Objection Notice given in a timely manner, Seller shall have three (3) business days from receipt of such Title Objection Notice within which to notify Buyer as to each properly disapproved matter either that: (i) Seller elects not to cause such disapproved matter to be removed as of the Closing Date, or (ii) Seller intends to either: (A) use commercially reasonable efforts to cause such disapproved matter to be removed or released prior to the Closing Date; or (B) cause the Title Company to insure or endorse over such disapproved matter. Failure by Seller to deliver any written notification of its election within such period shall be deemed to be an election not to cause any disapproved matters to be removed. If Seller elects not to cause any or all such disapproved matters to be removed or insured over as aforesaid, Buyer shall have ten (10) business days from receipt of written notice thereof (or ten (10) business days from the date Seller is deemed to have elected not to remove any disapproved matter) to, in writing, either: (1) revoke its disapproval and proceed with the purchase of the Property without any reduction in the Purchase Price and taking the Property subject to such matter; or (2) terminate this Agreement. If Buyer timely disapproves of the Title Documents and elects to terminate this Agreement as a result thereof, the Deposit and all interest accrued thereon shall be immediately returned to Buyer. In the event Buyer fails to give such timely notice of election to terminate, then Buyer shall be deemed to have waived its objections to the Title Documents. If the Escrow Holder revises the Preliminary Report after Buyer’s approval thereof to add or modify exceptions or to add or modify the conditions to obtaining any endorsement requested by Buyer during or after the Permitting Period and such additions or modifications are not approved by Buyer and are not removed by the Closing Date, Buyer shall be entitled, by written notice to Seller, to terminate this Agreement (subject to the obligations that specifically survive the termination of this Agreement) and cancel the escrow, and Buyer shall immediately thereafter receive a refund of the Deposit.

4.03 Permitting Period - The Permitting Period shall commence on the Effective Date and terminate 30 days before Close of Escrow. Buyer shall have the right, after the Effective Date, to: (i) review all of the public documents the Seller possesses pertaining to the Property; (ii) come upon the Property or direct its consultants to come upon the Property to conduct any and all surveys, inquiries, inspections, investigations, tests, engineering surveys and studies on, around or pertaining to the Property as Buyer may elect to make, conduct or maintain; (iii) conduct consultations and negotiations with persons of Buyer’s choosing; (iv) conduct consultations and negotiations pertaining to any third party document contemplated by the Agreement, or that Buyer determines necessary or desirable; (v) apply for and obtain all City Approvals and Government Approvals necessary for the use of the Property as generally described in Section 1.03 hereof; and (vi) do all the things described in this Section 4.03 (“Due Diligence”), provided that said Due Diligence shall be subject to the terms and conditions specified herein.

(a) Seller warrants that it will conduct a reasonable search of Seller’s records and has or, within thirty (30) calendar days after the Effective Date, will provide to Buyer all of the documents discovered in said search relating to the Property (“Seller’s Documents”) except the financial information submitted to the Seller by other developers who have submitted proposals
to Seller relating to the Property, if any. Buyer acknowledges that Seller’s Documents are being made available to Buyer solely as a courtesy, and that except as is otherwise provided in this Agreement, Seller has not and does not verify or warrant the accuracy of any statements or other information contained within the documents provided to Buyer by Seller. Seller shall provide Buyer with a Notice of Disclosure within thirty (30) calendar days of the Effective Date of this Agreement, confirming that it has disclosed all documents which its reasonable search has discovered (“Seller’s Notice of Disclosure”). Buyer shall, in writing, notify Seller on or before thirty (30) days following Buyer’s receipt of the Seller’s Notice of Disclosure, of Buyer’s approval or disapproval of Seller’s Documents. If for any reason Buyer has not delivered to Seller written notice of approval of Seller’s Documents or written waiver of the right to conduct said review or to approve the results thereof on or before the expiration of the thirtieth (30th) day following Buyer’s receipt of the Seller’s Notice of Disclosure, then it shall be deemed that Buyer has disapproved the Seller’s Documents, the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(b) During the Permitting Period, Buyer shall specifically review and approve or disapprove all existing conditions of the Property, including but not limited to, the condition or safety of the Property or any improvements thereon. Buyer shall, in writing, notify Seller on or before the forty fifth (45th) day after the Effective Date, of Buyer’s approval or disapproval of the results of the investigation of the items identified in this section 4.03(b), and shall provide Seller with any non-privileged reports or other documents obtained by Buyer as a result of the investigations set forth in this section 4.03(b). If for any reason Buyer has not delivered to Seller written notice of approval of the results of Buyer’s review relating to the items identified in this section 4.03(b) or written waiver of the right to conduct said review or to approve the results thereof on or before the expiration of the forty fifth (45th) day after the Effective Date, then Seller shall provide Buyer a written notice of Buyer’s failure to deliver such approval or disapproval. On or before the fifteenth (15th) day following Seller’s notice to Buyer of such failure, if for any reason Buyer has still not delivered to Seller written notice of approval of the results of Buyer’s review or written waiver of the right to conduct said review or to approve the results thereof it shall be deemed that Buyer has disapproved the results of Buyer’s Due Diligence, the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(c) During the Permitting Period, Seller and Buyer shall negotiate the location, scope, description and terms and conditions of the Parking Easement, and memorialize any agreement that they reach in an easement document that is mutually acceptable to both parties. The parties acknowledge and agree that as part of said easement document, terms shall be included that (i) assure the public the right to use and access said Parking Easement and (ii) require the Buyer to release and hold the Seller harmless from any and all damages, costs, expenses, attorneys’ fees, payments, penalties, claims and liability of any sort (including but not limited to any claims or rights invoked by the United States of America as the Seller’s predecessor in interest to the Adjacent Property) arising out of the Seller conveying the Parking Easement to the Buyer and entering into the easement document. The parties recognize and agree that the Seller may not be able to grant to Buyer the Parking Easement for the purposes desired by the Buyer, in which case, Buyer shall have the right to terminate this Agreement. Buyer shall, in writing, notify Seller on or before the ninetieth (90th) day after the Effective Date, of Buyer’s approval or
disapproval of the results of said negotiations, the Seller’s determination whether it can grant the Parking Easement and the easement document, if any. If for any reason Buyer has not delivered to Seller written notice of approval of the items identified in this section 4.03(c) or written waiver of the right to approve said items, then Seller shall provide Buyer a written notice of Buyer’s failure to deliver such approval or disapproval. On or before the fifteenth (15th) day following Seller’s notice to Buyer of such failure, if for any reason Buyer has still not delivered to Seller written notice of approval of said items or written waiver of the right to approve said items, it shall be deemed that Buyer has disapproved said items and, subject to section 2.03, the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(d) During the Permitting Period, Buyer shall determine the nature and estimated cost of obtaining and complying with the City Approvals and Government Approvals in order for the Buyer to effect the construction and occupancy of the Property as generally described in Section 1.03 hereof (“Buyer’s Development Work”). Except as otherwise provided by this Agreement, Buyer agrees to be responsible for (i) obtaining the City Approvals and Government Approvals and all the costs incurred to obtain same, (ii) paying fees necessary to obtain said City Approvals and Government Approvals, and (iii) commencing and completing Buyer’s Development Work permitted under and pursuant to the City Approvals and Government Approvals. Buyer shall, in writing, notify Seller on or before the expiration of the Permitting Period of Buyer’s approval or disapproval of the results of Buyer’s determinations concerning the nature and estimated cost of obtaining and complying with the City Approvals and Government Approvals. If for any reason Buyer has not delivered to Seller written notice of approval of the results of Buyer’s determinations or written waiver of the rights relating thereto, on or before the expiration of the Permitting Period, it shall be deemed that Buyer has disapproved the results of Buyer’s Due Diligence and, subject to section 2.03, the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(e) During the Permitting Period, Buyer, shall apply for all applicable City Approvals and Government Approvals, pursue same to completion and obtain said City Approvals and Government Approvals by final decision or shall provide to Seller written notice of Buyer’s determination to withdraw its applications for said City Approvals and/or Government Approvals. In the event that as a result of said applications, Buyer is granted final approvals to construct more than fourteen (14) residential units on the Hamilton Senior Triangle, the Purchase Price shall be adjusted as follows: (1) the Purchase Price shall be increased by twenty five thousand dollars ($25,000.00) each for the fifteenth and sixteenth units; and 2) the Purchase Price shall be increased by fifty six thousand dollars ($56,000.00) for each unit approved above sixteen. If for any reason Buyer has not delivered to Seller written notice of approval of the City Approvals and the Government Approvals by the expiration of the Feasibility and Permitting Period, or has delivered to Seller written notice of Buyer’s determination to withdraw its applications for said City Approvals and/or Government Approvals, then it shall be deemed that Buyer has disapproved the City Approvals and/or Government Approvals and the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting only those obligations that survive termination).
(f) The Army Quitclaim Deed imposes various obligations on the Seller pertaining to, among other things, environmental remediation, inspections, and indemnification. Buyer agrees to assume all of these obligations as they pertain to the Property. The parties agree that a separate assumption agreement (“Assumption Agreement”) under which Buyer agrees to assume said obligations should be entered by the parties and recorded simultaneously with the Quitclaim Deed. Therefore, during the Permitting Period, Seller and Buyer shall negotiate the terms and conditions of the Assumption Agreement, and memorialize any agreement that they reach in a document that is mutually acceptable to both parties. Buyer shall, in writing, notify Seller on or before the ninetieth (90th) day after the Effective Date, of Buyer’s approval or disapproval of the results of said negotiations and the Assumption Agreement. If for any reason Buyer has not delivered to Seller written notice of approval of the items identified in this section 4.03(f) or written waiver of the right to approve said items, then Seller shall provide Buyer a written notice of Buyer’s failure to deliver such approval or disapproval. On or before the fifteenth (15th) day following Seller’s notice to Buyer of such failure, if for any reason Buyer has still not delivered to Seller written notice of approval of said items or written waiver of the right to approve said items, it shall be deemed that Buyer has disapproved said items and the Deposit shall be immediately returned to Buyer and this Agreement shall terminate (excepting those obligations that survive termination).

(g) No less than once every four weeks, Buyer shall contact Seller to provide Seller reports on the progress of Seller’s Due Diligence pursuant to this subsection. For purposes of this subsection, an e-mail summary to the City Manager and Director of Hamilton Base Reuse of the City of Novato shall be deemed sufficient. Seller agrees to cooperate with Buyer in obtaining the City Approvals and Government Approvals, provided that such cooperation does not require payment of money, incurring debt and/or unreasonable expenditures of time. Under no circumstances shall said cooperation include or imply the City’s granting the necessary City Approvals and/or permits for Buyer’s Development Work, it being expressly understood and agreed that the City reserves the panoply of its police powers, discretion and land use authority to approve or disapprove Buyer’s Development Work.

(h) The cost of any Due Diligence, including but not limited to any surveys, inquiries, inspections, investigations, application fees, attorneys’ fees, consultant costs, analysis and report costs, tests and/or studies, shall be borne solely by Buyer. As part of processing applications for City Approvals, Buyer shall be required to comply with the City’s fee and cost recovery program. Buyer shall pay for all costs incurred in connection with the processing of the City Approvals and the Government Approvals, including but not limited to, noticing all hearings, preparing and delivering the notices, staff reports, environmental documents and performing all other tasks required of the City under CEQA and the City’s own land use (and other agencies’) processing rules and regulations, along with all other costs incurred in applying for and obtaining the City Approvals and Government Approvals.

(i) In the event that escrow fails to close, Buyer shall restore or repair any damage to the Property that arises out of or relates to Buyer’s or Buyer’s representatives’ inspection or testing of the Property. And, under all circumstances, Buyer shall release, defend with counsel reasonably acceptable to the Seller, hold harmless and indemnify the Seller for any and all liability, damages, clean up costs, fines, penalties, claims, injuries, costs (including attorneys’
and expert witness fees), and expenses of any sort arising out of or in any way connected with Buyer’s or Buyer’s representatives’ presence on and/or inspection or testing of the Property. Said indemnification shall survive Close of Escrow and/or the termination of this Agreement.

4.04 Extension of Time Periods. Any failure or delay not within the Buyer’s control, such as an act of god, fire or other casualty, or delays not caused by Buyer relating to City Approvals, Government Approvals, and/or delays based on investigations, permitting or lack of government resources shall not constitute a default or breach of any terms and conditions. Any such delays shall act as a tolling of any time periods or deadlines contained within this Agreement for the period of the delay.

4.05 Return of Deposit. Subject to Section 2.03, if Buyer timely disapproves or is deemed to have disapproved the Title Documents, then in such event(s), this Agreement shall terminate (except as to matters that specifically survive the termination of this Agreement), the escrow shall be cancelled, and the entire Deposit shall be immediately returned to Buyer. Subject to Section 2.03, conversely, if Buyer timely approves or waives objections to the Title Documents and all of the Due Diligence matters, then the Deposit, together with all interest thereon, shall become non-refundable (excepting only if Seller breaches its obligations to convey title to Buyer pursuant to the terms and subject to the conditions set forth in this Agreement) and be deemed consideration for Seller entering into this Agreement, and shall immediately be paid to the Seller, and the Escrow Holder is hereby irrevocably so instructed.

ARTICLE 5. POSSESSION

Possession of the Property, free of any tenancies whatsoever, shall be given to Buyer upon the Close of Escrow unless otherwise negotiated between the parties and approved by the Seller, in writing. Access to the Property shall be provided upon the signing of this Agreement and such access shall be governed by the applicable provisions of this Agreement.

ARTICLE 6. BROKERS

6.01 Buyer and Seller have not been represented by any broker and do not have any agency relationship with any real estate agents or brokers in connection with the sale of the Property, and Buyer and Seller shall not be responsible or have any liability for any commission payable to any such broker or agent.

6.02 Buyer and Seller hereby agree to save, defend (with legal counsel reasonably acceptable to the indemnified party) and hold each other harmless from any real estate brokerage commission, finders fee, and all costs and expenses (including attorneys’ fees) of investigating and/or defending any such claims, payable as to any broker, realtor or finder which such indemnifying party may engage or is claimed to have engaged in connection with the transaction set forth in this Agreement. The provisions of this Article shall survive any termination of this Agreement and Close of Escrow.

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION
7.01 Seller’s Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to buy the Property from Seller, Seller makes the following representations and warranties the continued truth and accuracy of which shall constitute a condition precedent to Buyer’s obligations hereunder.

(a) **Authority.** Seller has full power and authority to enter into this Agreement and to complete the transaction contemplated by this Agreement.

(b) **Binding Agreement.** Seller’s acceptance and performance of the terms and provisions of this Agreement have been duly authorized and approved by all necessary parties. Upon Seller’s execution and delivery of this Agreement, this Agreement shall be binding and enforceable against Seller in accordance with its terms, and upon Seller’s execution of the additional documents contemplated by this Agreement, they shall be binding and enforceable against Seller in accordance with their terms.

(c) **Consents.** To Seller’s knowledge, neither the execution or delivery of this Agreement nor the consummation of the transaction is subject to any requirement that Seller obtain any consent, approval or authorization of, or make any declaration or filing with, any governmental authority or third party which has not been obtained or which, in any case or in the aggregate, if not obtained or made would render such execution, delivery or consummation illegal or invalid, or would result in the creation of any lien, charge or encumbrance upon the Property.

(d) **Litigation.** To Seller’s knowledge, there is no litigation, arbitration or administrative proceeding pending, threatened against Seller with respect to the Property nor is there any basis known to Seller for any such action or proceeding.

(e) **Prior Agreement.** Seller has not committed nor obligated itself in any manner whatsoever to sell the Property or any portion thereof to any party other than Buyer.

(f) **Environmental Hazards/Hazardous Materials.**

1. Seller acquired the Property on or about October 10, 1997, from the United States of America, but never used, improved or occupied the Property for any purpose. The Seller acquired the Property for the purpose of disposing of it for development to assist in the revitalization of the Hamilton Base reuse. Thus, the Seller’s knowledge of the Property and its conditions is limited. Seller further represents that except as is disclosed in the documents provided to Buyer pursuant to Section 4.03(a), to Seller’s knowledge no additional Hazardous Substances or Materials (defined below) exist on the Property which would violate any federal, state or local statutes, regulations, ordinances or other requirements. Additionally, to Seller’s knowledge, since the date that the Seller acquired title to the Property, the Property has not been used for the generation, manufacture, treating, refining, transporting, handling, producing, processing, storage or disposal of Hazardous Substances. “Used” shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.
2. Except as otherwise provided in this Agreement, it shall be the sole responsibility of the Buyer, at the Buyer’s sole expense, to investigate and determine the soil, ground water and other conditions of the Property and the suitability of such conditions for the improvements to be constructed by the Buyer. If the soil conditions or any other condition of the Property are not in all respects entirely suitable for the use or uses to which the Property will be put by Buyer, then it is the sole responsibility and obligation of the Buyer to take such action as may be necessary to place the soil and other conditions of the Property in a condition suitable for the development of the Property.

3. Buyer warrants and represents that the Property and its improvements shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Substances or Materials (defined below) or solid waste, except in compliance with all applicable federal, state, and local laws, rules and regulations, City Approvals or Government Approvals. For the purposes of this Agreement, “Hazardous Substances” and “Hazardous Materials” shall include, without limitation, asbestos, polychlorinated biphenyls, and petroleum (including crude oil or any fraction thereof), and materials or substances defined as “hazardous waste”, “hazardous substances”, “hazardous materials”, “pollutants”, or “toxic substances” in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq.; any other environmental law promulgated by the United States; any environmental law promulgated by the State of California; and in the rules or regulations adopted and guidelines promulgated pursuant to said laws. “Release” shall mean releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping.

(g) Notice of Violations, Condition of Property and Condemnation. To Seller’s knowledge, Seller has received no notice from any governmental authority of any pending or threatened (i) zoning, building, fire or health code violations or violations of other governmental regulations concerning the Property that has not previously been corrected, or (ii) any condemnation of the Property or any part of the Property; provided, however, that by making these representations the Seller is not warranting that the Property meets current zoning or building code requirements or is otherwise in compliance with all applicable laws and regulations.

(h) Close of Escrow. As a condition to Buyer’s obligations herein to close escrow but not as a covenant of Seller to ensure their continuing truth and accuracy, the representations and warranties of Seller set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and of such time.

(i) As is Conveyance. Other than those expressly made herein, Seller has not made any express or implied representations, guarantees, promises, statements, assurances or warranties as to the suitability for any purpose or the profitability of owning and operating any or
all of the Property, or as to the physical condition thereof, or as to the net or gross acreage
contained therein, or as to the zoning thereof, or any other past, present or future matter
whatev er, or as to the completeness or accuracy of any report issued by any third party.
Whenever Seller’s warranty or representation is qualified by the phrase “to Seller’s knowledge”
or “to Seller’s actual knowledge” or any similar phrase implying a limitation on the basis of
knowledge, it is intended to indicate that during the ownership of the Property by Seller, no
information has come to the attention of the City Manager, Michael Frank, or to the Director of
Hamilton Base Reuse, Scott Ward, that would give them actual knowledge of the existence of a
state of facts contrary to that indicated in the warranty or representation. However, Seller has not
undertaken any independent investigation to determine the existence or non-existence of such
facts, and no inference as to Seller’s knowledge of the existence or non-existence of such facts
should be drawn from the fact that Seller has owned the Property and/or not undertaken such an
investigation. The parties further agree that Seller is under no obligation or duty to undertake
any such investigation. Except as provided in this Agreement, Buyer acknowledges that except
as to those representations and warranties made and given by Seller as contained in this
Agreement, no other representations or warranties have been made and that the Property is being
purchased on an “AS IS WITH ALL FAULTS” basis. Buyer further acknowledges that, as of
the Closing Date, Buyer (1) will have had a full, complete and unfettered right to inspect the
Property to its entire satisfaction, and (2) shall have investigated, to Buyer’s complete
satisfaction, all items, matters and conditions described in Sections 4.02 and 4.03. Buyer further
acknowledges that it is entering into this Agreement on the basis of Buyer’s own investigation of
the physical and environmental conditions of the Property, and Buyer assumes the risk that
adverse physical and environmental conditions may not have been revealed by its own
investigations. Buyer further acknowledges and agrees that it has investigated and has
knowledge of operative or proposed governmental laws, regulations and requirements (including
but not limited to those pertinent to the Governmental Approvals, City Approvals and/or building
code, disability access, zoning, environmental and land use laws and regulations) (collectively,
“Applicable Laws”) to which the Property is or may be subject and accepts the Property solely
upon the basis of Buyer’s review and determination of the applicability and effect of such
Applicable Laws. Notwithstanding anything to the contrary stated herein, Buyer further
acknowledges that Seller, its agents and employees and other persons acting on Seller’s behalf
have made no representations or warranty of any kind in connection with any matter relating to
the physical or environmental condition of, value of, fitness of, suitability of or Applicable Laws
pertinent to the Property upon which Buyer has relied directly or indirectly for any purpose.
Buyer acknowledges that the Seller takes the position that Cal. Gov’t Code sections 54222 et
seq. do not apply to the Property or to this transaction, and as such, did not comply with its
provisions with respect to the disposition of the Property to Buyer pursuant to this Agreement
and Buyer agrees that Seller’s failure to so comply does not constitute a breach of this
Agreement and that Seller shall not be responsible to Buyer for any liability, damages, or claims
of any sort arising out of such failure. Buyer hereby waives, releases and forever discharges
Seller and Seller’s Representatives, and any other person acting on behalf of Seller, of and from
any claims, actions, causes of action, demands, rights, damages, costs, and liabilities of any sort,
known or unknown, foreseen or unforeseen, which Buyer now has or which may arise in the
future on the account of or in any way growing out of or connected with the physical or
environmental condition of the Property or any Applicable Laws, including but not limited to
Cal. Gov’t Code sections 54222 et seq., excepting only those claims, actions, causes of action,
demands, rights, damages, costs, and liabilities resulting from a breach by Seller of this Agreement.

(j) **Warranties Survive Close of Escrow.** The above warranties and representations made by Seller shall survive Close of Escrow.

7.02 **Buyer’s Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes and gives the following representations and warranties, the continued truth, accuracy and completeness of which shall constitute a condition precedent to Seller’s obligations hereunder:

(a) **Authority and Binding Effect.** Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement.

(b) **Condition of Property.** This Agreement affords Buyer a reasonable period of time to perform such due diligence as Buyer believes is reasonably necessary to make the decision to consummate the transactions described in this Agreement. Except as to the express representations and warranties made by Seller as contained and qualified in this Agreement, Buyer is relying and shall rely solely upon its own investigation and inspection of the Property and upon the aid and advice of Buyer’s independent expert(s) in purchasing the Property, and (except as otherwise specifically provided to the contrary in this Agreement) shall take title to the Property without any other warranty, express or implied, by Seller or any employee or agent of Seller.

(c) **Buyer Experience.** Buyer represents and warrants to Seller that Buyer is acquiring the Property for commercial or business use, has knowledge and experience in financial and business matters that enable Buyer to evaluate the merits and risks of the transactions herein contemplated, and has bargained for and obtained a purchase price and agreement on terms which make the limitations of Buyer’s recourse against Seller acceptable. Buyer warrants and represents that Buyer is an experienced purchaser and/or owner/manager/operator of property similar to the size and function of the Property, and is familiar with matters that typically impact the operation and management of similar residential property.

(d) **Hazardous Materials and “As is” Sale.** Buyer re-affirms and re-states the representations and warranties it makes in sections 7.01(f) and (i)

(e) **Close of Escrow.** The representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Closing Date as if those representations and warranties were made on and of such time.

(f) **Warranties Survive Close of Escrow.** The above warranties and representations made by Buyer shall survive Close of Escrow.
7.03 Discovery of Inaccuracy.

(a) Notice. If, after the date of this Agreement, either party discovers any inaccuracy in any representation or warranty under this Agreement, whether made by that party or the other party, the discovering party shall promptly notify the other party in a written notice setting forth the particular representation or warranty which is inaccurate, and the nature of the inaccuracy discovered.

(b) Right to Terminate. If the inaccuracy in any representation or warranty under this Agreement is material, then the party in whose favor the representation or warranty runs (the “Benefitted Party”) shall have the right to terminate this Agreement within thirty (30) calendar days of learning of such inaccuracy by giving written notice to the other party (the “Representing Party”). Failure of the Benefitted Party to terminate this Agreement within such 30-day period shall be deemed a waiver of the right to terminate, but not a waiver of any other right or remedy available at law or equity. If the Representing Party had no knowledge of the inaccuracy on the date of execution of this Agreement, then the Benefitted Party’s sole remedy shall be to terminate this Agreement (and if the Benefitted Party is Buyer the Deposit shall be returned to Buyer upon Buyer’s termination due to an inaccuracy in any representation or warranty by Seller and if the Benefitted Party is Seller, Seller shall have the remedies specified in section 9.01), and the parties shall have no further obligation to each other except as to those obligations that specifically survive the termination of this Agreement.

(c) Other Rights. If the Representing Party did have knowledge of the inaccuracy on the date of execution of this Agreement, then the Benefitted Party shall also have all other rights and remedies afforded by law and equity.

7.04 Buyer’s Indemnification. Buyer, on behalf of itself as well as Buyer’s successors and assigns, hereby agrees to indemnify, defend and hold harmless Seller and Seller’s agents, personal representatives, employees, spouses, heirs, partners, officers, directors, officials, successors and assigns (collectively, “Sellers Representatives”), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct, contingent or consequential, incurred or suffered by or asserted or awarded against Seller or Sellers Representatives relating to or arising from (i) the ownership, operation or possession of the Property by Buyer or Buyer’s Representatives (defined below) subsequent to the Close of Escrow, (ii) the acts or omissions of Buyer or Buyer’s Representatives (iii) any entry on the Property by Buyer or Buyer’s Representatives, (iv) Buyer’s performance of its Due Diligence, including, but not limited to any act or omission by Buyer or Buyer’s Representatives in the course of performing the inspections, testings or inquiries provided for in this Agreement (v) any material breach of any covenant, representation or warranty of Buyer contained in this Agreement, (vi) Buyer’s or Buyer’s agents’ violation of any federal, state or local law, ordinance or regulation, occurring or allegedly occurring with respect to the Property (vii) any Release of Hazardous Substances (as defined in this Agreement) at the Property subsequent to the Close of Escrow by Buyer or Buyer’s Representatives, (viii) the Seller’s failure to comply with Cal. Gov’t Code section 54222 et. seq. and/or (ix) any service contracts, leases...
and/or any tenant security deposit which accrued subsequent to the Close of Escrow, and in each instance, except to the extent such matters arise from the sole negligence or the willful misconduct of Seller or Seller’s breach of a representation, warranty or obligations in this Agreement.

Upon consummation of the closing hereunder, the foregoing indemnity shall be deemed to be restated and made again as of the Closing Date and shall survive the Close of Escrow and the delivery and recording of the Deed.

7.05 Seller’s Indemnification. Seller, on behalf of itself as well as Seller’s successors and assigns, hereby agrees to indemnify, defend and hold harmless Buyer and Buyer’s agents, personal representatives, partners, officers, directors, officials, employee, spouses, heirs, successors and assigns (collectively, “Buyer’s Representatives”), from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys’ fees and costs), whether direct, contingent or consequential, incurred or suffered by or asserted or awarded against Buyer or Buyer’s Representatives relating to or arising from (i) the ownership or operation of the Property by Seller or Seller’s predecessors, successors or assigns prior to the Close of Escrow, (ii) the acts or omissions of Seller or Seller’s Representatives, (iii) any material breach of any covenant, representation or warranty of Seller contained in this Agreement (except to the extent that this Agreement states that Buyer is not relying on same), (iv) the violation of any federal, state or local law, ordinance or regulation, occurring or allegedly occurring with respect to the Property during Seller’s ownership, prior to the Close of Escrow, (v) the existence and/or Release of Hazardous Materials or Hazardous Substances (as defined in this Agreement) handled, transported, generated, disposed of, or released from, emanating from, or in the vicinity of the Property prior to the Close of Escrow; or (vi) any contracts claims which accrued during Seller’s ownership prior to the Close of Escrow, and in each instance, except to the extent such matters arise from the sole negligence or the willful misconduct of Buyer or Buyer’s breach of a representation, warranty or obligations in this Agreement.

Upon consummation of the closing hereunder, the foregoing indemnity shall be deemed to be restated and made again as of the Closing Date and shall survive the Close of Escrow and the delivery and recordation of the Deed.

ARTICLE 8 USE OF THE PROPERTY

8.01 Obligation to Refrain From Discrimination

To the extent required by law, the Army Quitclaim Deed and/or the Assumption Agreement, the Buyer covenants by and for itself alone that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Buyer itself establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub-lessees or vendees of the
Property. Nothing in this Section 8.01 limits Buyer’s right to develop the Project described at section 1.03.

ARTICLE 9 DEFAULTS, REMEDIES AND TERMINATION

9.01 By Buyer. SELLER AND BUYER HAVE DISCUSSED THE POSSIBLE CONSEQUENCES TO SELLER IN THE EVENT THAT THE CLOSE OF ESCROW DOES NOT OCCUR BY REASON OF BUYER’S DEFAULT. SELLER AND BUYER AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO FIX THE ACTUAL DAMAGES TO SELLER IN SUCH EVENT. SELLER AND BUYER AGREE THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, A REASONABLE REMEDY FOR SELLER AS TO SUCH DAMAGES IS THAT SELLER SHALL BE RELEASED FROM ITS OBLIGATIONS TO SELL THE PROPERTY TO BUYER AND SELLER SHALL KEEP THE DEPOSIT PLUS ANY INTEREST EARNED THEREON. ACCORDINGLY, SHOULD THE SUBJECT TRANSACTION FAIL TO BE CONSUMMATED ACCORDING TO THE TERMS OF THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELIEVED OF ANY OBLIGATION TO SELL THE PROPERTY TO BUYER, BUYER SHALL HAVE NO RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT, AND THE DEPOSIT AND ANY AND ALL INTEREST THEREON SHALL BE RETAINED BY SELLER. SUCH REMEDY IS NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, OR SIMILAR AUTHORITY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO THE REQUIREMENTS OF CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. THE LIQUIDATED DAMAGES PROVIDED FOR UNDER THIS SECTION SHALL BE SELLER’S SOLE AND EXCLUSIVE REMEDY EXCEPT THAT SELLER SHALL ALSO HAVE THE RIGHT TO ENFORCE BUYER’S OBLIGATIONS TO INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS UNDER THIS AGREEMENT AS WELL AS BUYER’S WAIVERS AND RELEASES SET FORTH IN THIS AGREEMENT AND ANY OTHER OF BUYER’S OBLIGATIONS THAT SURVIVES TERMINATION OF THIS AGREEMENT. BY PLACING THEIR INITIALS BELOW, SELLER AND BUYER SPECIFICALLY ACKNOWLEDGE, CONSENT TO AND CONFIRM THE ACCURACY OF THE STATEMENTS MADE WITHIN THIS SECTION 9.01 AND THE FACT THAT SELLER AND BUYER WERE BOTH REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

Seller’s Initials__________  Buyer’s Initials__________

9.02 By Seller. IN THE EVENT SELLER FAILS TO CONVEY THE PROPERTY TO BUYER AS REQUIRED BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR OTHERWISE FAILS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, FOR ANY REASON OTHER THAN BUYER’S DEFAULT OR AS OTHERWISE PERMITTED BY THIS AGREEMENT, BUYER SHALL BE PAID THE DEPOSIT PLUS ACCRUED INTEREST AND BUYER MAY PURSUE AS AGAINST SELLER ALL REMEDIES AVAILABLE TO BUYER AT LAW OR IN EQUITY.
ARTICLE 10. MISCELLANEOUS

10.01 Interpretation. This Agreement has been executed in Marin County, California. Venue and jurisdiction for any litigation arising out of or in connection with this Agreement shall be in Marin County, California. This Agreement shall be construed and enforced pursuant to the laws of the State of California. The captions of the Articles and Sections in this Agreement are for convenience only. The provisions hereof shall be binding upon and inure to the benefit of the successors and assigns of Seller and Buyer.

10.02 Time of Essence. Time is of the essence in this Agreement and of the escrow set forth in this Agreement.

10.03 Integration. This Agreement and its exhibits contain the entire agreement between Seller and Buyer, superseding any and all prior written or oral agreements between Seller and Buyer concerning the subject matter contained in this Agreement, and Seller and Buyer hereby release each other from any and all rights, obligations and claims under such prior agreements.

10.04 Notice. Any notice under this Agreement shall be in writing, and any written notice or other document shall be deemed to have been duly given as of the following: (i) on the date of personal service on Seller or Buyer; (ii) on the third business day after mailing, if the document is mailed by registered or certified mail, return receipt requested; (iii) one day after being sent by professional or overnight courier or messenger service guaranteeing one-day delivery, with receipt confirmed by the courier; or (iv) on the date of transmission if sent by telegram, email or other means of electronic transmission resulting in written copies, with receipt confirmed (and with a copy of such notice, demand or communication deposited on the same day in a United States post office with first class postage prepaid and addressed to the party or parties). Any such notice shall be delivered or addressed to Seller or Buyer at the addresses set forth below or at the most recent address specified by the addressee through written notice under this section 11.04. Failure to give notice in accordance with any of the foregoing methods shall not defeat the effectiveness of notice actually received by the addressee.

To Buyer: Ian C. Gillis
             President
             Urban Community Partners, LLC
             1730 Solano Ave.
             Berkeley, CA 94707
             Fax: 510 225 4046
             Email address: ian.gillis@urbancommunitypartners.com >

With copies to: Archer Norris, PLC
               2033 N. Main Street, Suite 800
               Walnut Creek, CA 94596
10.05  **Attorneys’ Fees; Prejudgment Interest.** If the services of an attorney are required by Seller or Buyer to secure the performance of this Agreement or otherwise upon the breach or default of Seller or Buyer, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement or the rights and duties of any person in relation thereto, the prevailing party shall be entitled to reasonable attorneys’ and expert fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Any award of damages following judicial remedy or arbitration as a result of the breach of this Agreement or any of the Agreement’s provisions shall include an award of prejudgment interest from the date of the breach at the maximum amount of interest allowed by law.

10.06  **Recordation of Agreement.** Upon execution of this Agreement, Buyer and Seller shall execute and acknowledge a Memorandum of Agreement in a form and content meeting the approval of all parties (the “Memorandum”) and will deliver the Memorandum to Escrow Holder to be recorded against the Property in the Official Records of the Marin County Recorder’s Office at Close of Escrow.

10.07  **Assignment.** Buyer may assign Buyer’s rights under this Agreement to purchase the Property prior to the Close of Escrow to an entity formed by Buyer (and other members and/or partners) to acquire title to the Property. Any other assignment prior to Close of Escrow may only be done with the prior written approval of the City.

10.08  **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions in this Agreement shall remain in full force and effect.
10.09 **Legal Advice.** Each party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to the fair meaning and not for or against any party based upon any attribution of such party as the sole source of the language in question.

10.10 **Rule of Construction.** Buyer and Seller have each read and fully understand the terms of this Agreement, and each has had the opportunity to have this Agreement reviewed by its own counsel. The rule of construction providing that ambiguities in an agreement shall be construed against the party drafting the same shall not apply.

10.11 **Dates.** If any dates hereunder fall on a Saturday, Sunday or legal holiday, such date shall be the next following business day.

10.12 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

10.13 **Captions.** Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

10.14 **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties thereto, to any person or entity other than the parties hereto. This agreement does not intend to create any third party beneficiaries.

10.15 **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

10.16 **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

10.17 **Fees and Other Expenses.** Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

10.18 **No Offer.** The parties agree that no offer and acceptance can occur until the parties mutually execute this document hereto, it being understood that the delivery of this document does not constitute an offer of any kind.

10.19 **Dependency and Survival of Provisions.** Except as otherwise provided herein, the respective covenants, agreements, obligations and undertakings of each party hereunder (whether to be performed before or after the Close of Escrow) shall be construed as dependent upon and given in consideration of those of the other party and shall survive the Close of Escrow and delivery of the Quitclaim Deed or termination of this Agreement for any reason.
10.20 Condemnation. If the Property, or any portion thereof is taken by eminent domain, or any proceeding for the same is commenced, prior to the Close of Escrow (collectively, “Taking”), then Buyer shall have the option to proceed with this transaction and to receive an assignment of any condemnation award, or terminate this Agreement and the escrow established hereby by written notice delivered to Seller upon the earlier of: (a) the Closing Date or (b) within fifteen (15) days after Buyer is notified in writing by Seller of the Taking. Failure of Buyer to timely deliver said notice shall be deemed a conclusive waiver of Buyer’s rights to terminate this Agreement on the basis of a Taking. If Buyer exercises its right to terminate this Agreement in accordance with the requirements of this section, then, subject to section 2.03, the Deposit shall be returned to Buyer.

10.21 Authorization. Each individual executing this Agreement, or its counterpart, on behalf of an entity, warrants that he/she is authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he/she represents.

10.22 Exhibits.

The following exhibits are attached hereto and incorporated by this reference.

Exhibit A   Legal Description of Real Property
IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the dates indicated below.

SELLER:  

THE CITY OF NOVATO  

By: _________________________  
Name: _______________________  
Title: ________________________  
Dated: _______________________

BUYER:  

URBAN COMMUNITY PARTNERS,  
LLC, a California Limited Liability Company  

By: _________________________  
Name: _______________________  
Title: ________________________  
Dated: _______________________

By: __________________________  
Name: _______________________  
Title: ________________________  
Dated: _______________________

Approved as to form:

By: __________________________  
Jeffrey A. Walter, City Attorney